

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Joseph Guglielmo,	:	Case No. 3:17-cv-6
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	Magistrate Judge Sharon L. Ovington
	:	
Montgomery County, Ohio et al.,	:	
	:	<u>PLAINTIFF'S REPLY TO</u>
Defendants.	:	<u>DEFENDANTS' MEMORANDUM IN</u>
	:	<u>OPPOSITION TO PLAINTIFF'S</u>
	:	<u>MOTION IN LIMINE TO EXCLUDE</u>
	:	<u>ALLEGATIONS AND INNUENDO</u>
	:	<u>THAT WITNESS ERIC BANKS AND</u>
	:	<u>PLAINTIFF'S COUNSEL</u>
	:	<u>COMMITTED IMPROPER ACTS</u>
	:	<u>REGARDING THE SWINK VIDEO</u>
	:	<u>(Doc. 168)</u>

Plaintiff seeks to exclude any allegations or innuendo that witness Eric Banks and/or Plaintiff's counsel committed improper acts regarding the Swink video. Defendants do not oppose the motion. Instead, the Defendants respond that the Swink video will need to be authenticated before admission. There are several ways the Swink video may be used by Plaintiff at trial. One is to show a pattern and practice of excessive force at the jail. Plaintiff's expert Michael Berg can testify to the evidence he relies on for his opinion. Fed. R. Evid. 703. The Swink video may be one basis.

Additionally, a witness at trial can testify that s/he is familiar with the video exhibit and that it is what it is claimed to be. The ordinary rule of federal evidence is that videos, like other evidence, are authenticated by "evidence sufficient to support a finding that the [video] is what the proponent claims it is." Fed. R. Evid. 901(b)(1). "[A] party seeking to admit a video need not produce evidence of how the video was made in order to properly authenticate." *United*

States v. Edington, 526 F. App'x 584, 591 (6th Cir. 2013), citing *United States v. Damrah*, 412 F.3d 618, 628, 124 Fed. Appx. 976 (6th Cir. 2005). If Defendants put on evidence that the Swink video was tampered with, Plaintiff could call a rebuttal witness, such as Ms. Swink, for Ms. Sealy to authenticate the video.

Plaintiff is willing to subpoena the records custodian from the County and/or testimony from witnesses that the jail video depicting the Swink assault was something created and kept in the regular course of business by the Montgomery County Sheriff. The fact that they tried to destroy this evidence internally does not eliminate that fact. If Defendants wish to make the argument that the video was altered they should immediately set forth in detail what alterations or tampering were made to the video tape.

Plaintiff respectfully requests that the Court grant Plaintiff's motion to exclude any allegations or innuendo that witness Eric Banks and/or Plaintiff's counsel committed improper acts regarding the Swink video since Defendants have failed to set forth any facts that the tape is anything other than what it depicts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2019, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/Jennifer L. Branch
Attorney for Plaintiff